

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL JOHN MODENA,

Plaintiff,

Case No. 1:08-cv-107

v

HON. JANET T. NEFF

KIMBERLY KAY MODENA  
a/k/a Kimberly Kay Leer,

Defendant.

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**JUDGMENT**

This is a purported declaratory judgment action brought by Plaintiff to declare superior rights in a parcel of property located in Muskegon County, Michigan against his wife Kimberly Kay Modena a/k/a Kimberly Kay Leer. On April 1, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed on grounds that the Court lacks subject-matter jurisdiction regarding Plaintiff's claim.

The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Judgment. *See* FED. R. CIV. P. 58.

Plaintiff argues that the Magistrate Judge erred in determining that the Court lacks subject-matter jurisdiction. Plaintiff's lengthy objections demonstrate his disagreement with the Magistrate

Judge's conclusions, but Plaintiff's analysis does not reveal any legal error by the Magistrate Judge. The Court therefore denies the objections. The Magistrate Judge correctly concluded that Plaintiff's assertion that his claim to real estate is founded upon a federal land patent is insufficient to create federal-question jurisdiction.

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. See *McGore v. Wigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

**THEREFORE, IT IS ORDERED** that the objections (Dkt 8) are DENIED and the Report and Recommendation (Dkt 7) is APPROVED and ADOPTED as the opinion of the Court.

**IT IS FURTHER ORDERED** that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b) for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: October 22, 2008

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge